

Senate Bill No. 1749

Passed the Senate August 23, 2006

Secretary of the Senate

Passed the Assembly August 17, 2006

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2006, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 640 of the Penal Code, and to add Chapter 8 (commencing with Section 99580) to Part 11 of Division 10 of the Public Utilities Code, relating to transit.

LEGISLATIVE COUNSEL'S DIGEST

SB 1749, Migden. Transit fare evasion.

Existing law provides that it is an infraction, punishable by a fine not to exceed \$250 and by specified community service, to evade the payment of any fare of, or engage in passenger misconduct on or in a described facility or vehicle.

This bill would authorize the City and County of San Francisco and the Los Angeles County Metropolitan Transportation Authority to adopt and enforce an ordinance, which would not apply to minors, to impose and enforce civil administrative penalties for fare evasion or passenger misconduct on or in a facility or vehicle, as described, in lieu of the criminal penalties. The bill would specify the administrative adjudication procedures for the imposition and enforcement of the administrative penalties.

The bill would make legislative findings and declarations regarding the inapplicability of a general statute within the meaning of Section 16 of Article IV of the California Constitution.

The people of the State of California do enact as follows:

SECTION 1. Section 640 of the Penal Code is amended to read:

640. (a) Any of the acts described in subdivision (b) is an infraction punishable by a fine not to exceed two hundred fifty dollars (\$250) and by community service for a total time not to exceed 48 hours over a period not to exceed 30 days, during a time other than during his or her hours of school attendance or employment, when committed on or in any of the following:

(1) A facility or vehicle of a public transportation system as defined by Section 99211 of the Public Utilities Code.

(2) A facility of, or vehicle operated by any entity subsidized by, the Department of Transportation.

(3) A leased or rented facility or vehicle for which any of the entities described in paragraph (1) or (2) incur costs of cleanup, repair, or replacement as a result of any of those acts.

(b) (1) Evasion of the payment of a fare of the system.

(2) Misuse of a transfer, pass, ticket, or token with the intent to evade the payment of a fare.

(3) Playing sound equipment on or in a system facility or vehicle.

(4) Smoking, eating, or drinking in or on a system facility or vehicle in those areas where those activities are prohibited by that system.

(5) Expectorating upon a system facility or vehicle.

(6) Willfully disturbing others on or in a system facility or vehicle by engaging in boisterous or unruly behavior.

(7) Carrying an explosive or acid, flammable liquid, or toxic or hazardous material in a public transit facility or vehicle.

(8) Urinating or defecating in a system facility or vehicle, except in a lavatory. However, this paragraph shall not apply to a person who cannot comply with this paragraph as a result of a disability, age, or a medical condition.

(9) (A) Willfully blocking the free movement of another person in a system facility or vehicle.

(B) This paragraph (9) shall not be interpreted to affect any lawful activities permitted or first amendment rights protected under the laws of this state or applicable federal law, including, but not limited to, laws related to collective bargaining, labor relations, or labor disputes.

(10) Skateboarding, roller skating, bicycle riding, or roller blading in a system facility, vehicle, or parking structure. This paragraph does not apply to an activity that is necessary for utilization of the transit facility by a bicyclist, including, but not limited to, an activity that is necessary for parking a bicycle or transporting a bicycle aboard a transit vehicle, if that activity is conducted with the permission of the transit agency in a manner that does not interfere with the safety of the bicyclist or other patrons of the transit facility.

(11) (A) Unauthorized use of a discount ticket or failure to present, upon request from a transit system representative,

acceptable proof of eligibility to use a discount ticket, in accordance with Section 99155 of the Public Utilities Code and posted system identification policies when entering or exiting a transit station or vehicle. Acceptable proof of eligibility must be clearly defined in the posting.

(B) In the event that an eligible discount ticket user is not in possession of acceptable proof at the time of request, any citation issued shall be held for a period of 72 hours to allow the user to produce acceptable proof. If the proof is provided, the citation shall be voided. If the proof is not produced within that time period, the citation shall be processed.

(c) Notwithstanding subdivision (a), the City and County of San Francisco and the Los Angeles County Metropolitan Transportation Authority may enact and enforce an ordinance providing that any of the acts described in subdivision (b) on or in a facility or vehicle described in subdivision (a) for which the City and County of San Francisco or the Los Angeles County Metropolitan Transportation Authority has jurisdiction shall be subject only to an administrative penalty imposed and enforced in a civil proceeding. The ordinance for imposing and enforcing the administrative penalty shall be governed by Chapter 8 (commencing with Section 99580) of Part 11 of Division 10 of the Public Utilities Code and shall not apply to minors.

SEC. 2. Chapter 8 (commencing with Section 99580) is added to Part 11 of Division 10 of the Public Utilities Code, to read:

CHAPTER 8. ADMINISTRATIVE ENFORCEMENT FOR FARE
EVASION AND PROHIBITED CONDUCTS

99580. (a) Pursuant to subdivision (c) of Section 640 of the Penal Code, the City and County of San Francisco and the Los Angeles County Metropolitan Transportation Authority may enact and enforce an ordinance to impose and enforce an administrative penalty for any of the acts described in subdivision (b). The ordinance shall include the provisions of this chapter and shall not apply to minors.

(b) (1) Evasion of the payment of a fare of the system.

(2) Misuse of a transfer, pass, ticket, or token with the intent to evade the payment of a fare.

(3) Playing sound equipment on or in a system facility or vehicle.

(4) Smoking, eating, or drinking in or on a system facility or vehicle in those areas where those activities are prohibited by that system.

(5) Expectorating upon a system facility or vehicle.

(6) Willfully disturbing others on or in a system facility or vehicle by engaging in boisterous or unruly behavior.

(7) Carrying an explosive or acid, flammable liquid, or toxic or hazardous material in a system facility or vehicle.

(8) Urinating or defecating in a system facility or vehicle, except in a lavatory. However, this paragraph shall not apply to a person who cannot comply with this paragraph as a result of a disability, age, or a medical condition.

(9) (A) Willfully blocking the free movement of another person in a system facility or vehicle.

(B) This paragraph shall not be interpreted to affect any lawful activities permitted or first amendment rights protected under the laws of this state or applicable federal law, including, but not limited to, laws related to collective bargaining, labor relations, or labor disputes.

(10) Skateboarding, roller skating, bicycle riding, or roller blading in a system facility, including a parking structure, or in a system vehicle. This paragraph does not apply to an activity that is necessary for utilization of a system facility by a bicyclist, including, but not limited to, an activity that is necessary for parking a bicycle or transporting a bicycle aboard a system vehicle, if that activity is conducted with the permission of the agency of the system in a manner that does not interfere with the safety of the bicyclist or other patrons of the system facility.

(11) (A) Unauthorized use of a discount ticket or failure to present, upon request from a system representative, acceptable proof of eligibility to use a discount ticket, in accordance with Section 99155, and posted system identification policies when entering or exiting a system station or vehicle. Acceptable proof of eligibility must be clearly defined in the posting.

(B) In the event that an eligible discount ticket user is not in possession of acceptable proof at the time of request, an issued notice of fare evasion or passenger conduct violation shall be held for a period of 72 hours to allow the user to produce

acceptable proof. If the proof is provided, that notice shall be voided. If the proof is not produced within that time period, that notice shall be processed.

(c) (1) The City and County of San Francisco and the Los Angeles County Metropolitan Transportation Authority may contract with a private vendor for the processing of notices of fare evasion or passenger conduct violation, and notices of delinquent fare evasion or passenger conduct violation pursuant to Section 99581.

(2) For the purpose of this chapter, “processing agency” means either of the following:

(A) The agency issuing the notice of fare evasion or passenger conduct violation and the notice of delinquent fare evasion or passenger conduct violation.

(B) The party responsible for processing the notice of fare evasion or passenger conduct violation and the notice of delinquent violation, if a contract is entered into pursuant to paragraph (1).

(3) For the purpose of this chapter, “fare evasion or passenger conduct violation penalty” includes, but is not limited to, a late payment penalty, administrative fee, fine, assessment, and costs of collection as provided for in the ordinance.

(4) All fare evasion and passenger conduct violation penalties collected by the processing agency in the City and County of San Francisco shall be deposited to the general fund of the City and County of San Francisco.

(5) All fare evasion and passenger conduct violation penalties collected by the Los Angeles County Metropolitan Transportation Authority shall be deposited in the general fund of the County of Los Angeles.

(d) (1) If a fare evasion or passenger conduct violation is observed by a person authorized to enforce the ordinance, a notice of fare evasion or passenger conduct violation shall be issued. The notice shall set forth the violation, including reference to the ordinance setting forth the administrative penalty, the date of the violation, the approximate time, and the location where the violation occurred. The notice shall include a printed statement indicating the date payment is required to be made, and the procedure for contesting the notice. The notice shall be served by personal service upon the violator. The notice,

or copy of the notice, shall be considered a record kept in the ordinary course of business of the issuing agency and the processing agency, and shall be prima facie evidence of the facts contained in the notice establishing a rebuttable presumption affecting the burden of producing evidence.

(2) When a notice of fare evasion or passenger conduct violation has been served, the person issuing the notice shall file the notice with the processing agency.

(3) If a person contests a notice of fare evasion or passenger conduct violation, the issuing agency shall proceed in accordance with Section 99581.

99581. (a) For a period of 21 calendar days from the issuance to a person of the notice of fare evasion or passenger conduct violation, the person may request an initial review of the violation by the issuing agency. The request may be made by telephone, in writing, or in person. There shall be no charge for this review. If, following the initial review, the issuing agency is satisfied that the violation did not occur or that extenuating circumstances make dismissal of the administrative penalty appropriate in the interest of justice, the issuing agency shall cancel the notice. The issuing agency shall advise the processing agency, if any, of the cancellation. The issuing agency or the processing agency shall mail the results of the initial review to the person contesting the notice.

(b) If the person is dissatisfied with the results of the initial review, the person may request an administrative hearing of the violation no later than 21 calendar days following the mailing of the results of the issuing agency's initial review. The request may be made by telephone, in writing, or in person. The person requesting an administrative hearing shall deposit with the processing agency the amount due under the notice for which the administrative hearing is requested. The issuing agency shall provide a written procedure to allow a person to request an administrative hearing without payment of the amount due upon satisfactory proof of an inability to pay the amount due. Notice of this procedure shall be provided to all persons requesting an administrative hearing. An administrative hearing shall be held within 90 calendar days following the receipt of a request for an administrative hearing, excluding time tolled pursuant to this

chapter. The person requesting the hearing may request one continuance, not to exceed 21 calendar days.

(c) The administrative hearing process shall include all of the following:

(1) The person requesting a hearing shall have the choice of a hearing by mail or in person. An in-person hearing shall be conducted within the jurisdiction of the issuing agency. If an issuing agency contracts with a private vendor pursuant to paragraph (1) of subdivision (c) of Section 99580, hearings shall be held within the jurisdiction of the issuing agency.

(2) The administrative hearing shall be conducted in accordance with written procedures established by the issuing agency and approved by the governing body or chief executive officer of the issuing agency. The hearing shall provide an independent, objective, fair, and impartial review of contested violations.

(3) The administrative review shall be conducted before a hearing officer designated to conduct the review by the issuing agency's governing body or chief executive officer. In addition to any other requirements of employment, a hearing officer shall demonstrate those qualifications, training, and objectivity prescribed by the issuing agency's governing body or chief executive as are necessary and which are consistent with the duties and responsibilities set forth in this chapter. The hearing officer's continued employment, performance evaluation, compensation, and benefits shall not be directly or indirectly linked to the amount of fare evasion or passenger conduct violation penalties imposed by the hearing officer.

(4) The person who issued the notice of fare evasion or passenger conduct violation shall not be required to participate in an administrative hearing. The issuing agency shall not be required to produce any evidence other than the notice of fare evasion or passenger conduct violation. The documentation in proper form shall be prima facie evidence of the violation pursuant to paragraph (1) of subdivision (d) of Section 99580.

(5) The hearing officer's decision following the administrative hearing may be personally delivered to the person by the hearing officer or sent by first-class mail.

(6) Following a determination by the hearing officer that a person committed the violation, the hearing officer may allow

payment of the fare evasion or passenger conduct penalty in installments or deferred payment if the person provides satisfactory evidence of an inability to pay the fare evasion or passenger conduct penalty in full. If authorized by the issuing agency, the hearing officer may permit the performance of community service in lieu of payment of the fare evasion or passenger conduct penalty.

99582. (a) Within 30 calendar days after the mailing or personal delivery of the decision described in subdivision (c) of Section 99581, the person may seek review by filing an appeal to be heard by the superior court where the same shall be heard de novo, except that the contents of the processing agency's file in the case shall be received in evidence. A copy of the notice of fare evasion or passenger conduct violation shall be admitted into evidence as prima facie evidence of the facts stated therein establishing a rebuttable presumption affecting the burden of producing evidence. A copy of the notice of appeal shall be served in person or by first-class mail upon the processing agency by the person filing the appeal. For purposes of computing the 30-calendar-day period, Section 1013 of the Code of Civil Procedure shall be applicable. A proceeding under this subdivision is a limited civil case.

(b) Notwithstanding any other provision of law, the fee for filing the notice of appeal shall be pursuant to paragraph (2) of subdivision (b) of Section 53069.4 of the Government Code. The court shall request that the processing agency's file on the case be forwarded to the court, to be received within 15 calendar days of the request. The court shall notify the appellant of the appearance date by mail or personal delivery. The court shall retain the fee regardless of the outcome of the appeal. If the court finds in favor of the appellant, the amount of the filing fee shall be reimbursed to the appellant by the processing agency. Any deposit of fare evasion or passenger conduct penalty shall be refunded by the processing agency in accordance with the judgment of the court.

(c) The conduct of the appeal under this section is a subordinate judicial duty that may be performed by a commissioner and other subordinate judicial officials at the direction of the presiding judge of the court.

(d) If a notice of appeal of the processing agency's decision described in subdivision (c) of Section 99581 is not filed within the period set forth in subdivision (a), that decision shall be deemed final.

SEC. 3. The Legislature finds and declares that because of the unique and special problems associated with fare evasion and passenger misconduct in a public transportation system in the City and County of San Francisco and the County of Los Angeles, it is necessary that minor transit violations, such as fare evasion and passenger misconduct, now punishable as an infraction, be adjudicated in that jurisdiction through a civil administrative process, and a statute of general applicability cannot be enacted within the meaning of Section 16 of Article IV of the California Constitution.

Approved _____, 2006

Governor